

Dear Sirs

I am writing this in response to the Draft Employment (Amendment No. 11) (Jersey) Law 201-

I do not propose to comment on the policy behind the law, but rather to focus on practical aspects of the proposed draft. There are a number of issues within the draft law that should be carefully considered prior to implementing the law. These issues are not mere technicalities, but will impact on the day to day operation of the rights and help both employers and employees to understand their mutual rights and obligations.

I would like to make the following observations.

- 1) As parental leave is a day one right (ie there is no qualifying period), how does it work when an employee changes employment part way through a 3 year cycle of parental leave? This is a potential administrative burden and this should be considered.
- 2) It may also be difficult for employers to track parental leave if an employee changes employers during a relevant parental leave period. A new employer may not be able to establish if an employee has exhausted their right to 6 weeks paid leave with a previous employer, or how much unpaid leave they have taken. As a result it may be necessary to consider amendments to the social security laws to allow parental leave data to be shared with employers for this purpose.
- 3) Unilateral notice provisions – employees can vary leave periods with minimal notice and employers cannot challenge or dispute this. This creates operational difficulties for employers if leave is changed with late notice, particularly if parental leave cover has already been obtained.
- 4) Unilateral right – no ability for employer to request amendment for operational reasons, which has an impact on employer and wider work force.
- 5) Statutory holiday - ordinarily employers are able to deal with the 2 weeks statutory holiday as this accrues over a one year period and this can therefore be dealt with relatively easily. There should be clarity over how and to what extent statutory holidays accrue during the parental leave, particularly if it extends over 3 years. Similar consideration should be given to public holidays.
- 6) What happens for employers on a practical level given the number of families that have a 1 - 3 year gap between children. Would that entitle the employee a total of 104 weeks leave (12 weeks of which would be paid)? There is no clarity on this in the draft law and what rights both the employee and the employer would have. Certainty in the law would assist both sides in understanding their rights and obligations.
- 7) Currently the discrimination law only bars discrimination on the grounds of maternity and pregnancy and is based on sex - not parental leave regardless of gender. The proposed amendments are still based on sex - and will still only protect female employees. A consequential amendment should be brought in to ensure that parental leave is protected on the same basis as maternity leave and regardless of gender. Otherwise there may be a disincentive to take parental leave for the non-birth parent. Furthermore this amendment would be necessary to protect someone who has taken parental leave when seeking a new job. Specific clauses that need reviewing:
 - a. Art 6(8) of the Discrimination (Jersey) Law 2013: "In relation to the protected characteristics of pregnancy and maternity, for the purposes of Parts 3, 4 and 5 and where the subject is not a woman, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth." This should remove any reference to maternity so that it is clear that it only applies to pregnancy and childbirth.

- b. Please see Article 6 of the Draft Law for further example of the problem. The amendment to the Discrimination Law that has been proposed is clear that direct discrimination only applies to a female employee taking "her" parental leave. This should be looked at to remove the anomaly/inequality. As a result of this proposed drafting the protection from discrimination as an employee and during selection for work would not apply (eg Art 9 of the Discrimination (Jersey) Law 2013).
- c. Schedule 2 definitions should be considered.

Yours faithfully

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